

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**DALE PETRY and
SONYA PETRY,**

Plaintiffs,

v.

CASE NO. 3:22-cv-00337

**MARSHALL UNIVERSITY
BOARD OF GOVERNORS,**

Defendant.

COMPLAINT

Now come Plaintiffs, by counsel, and for their Complaint against Defendant, allege as follows:

1. Plaintiffs Dale Petry and Sonya Petry are married and are residents of Myrtle Beach, South Carolina.
2. Defendant Marshall University Board of Governors is a statutorily created governing board which employs all faculty and staff of Marshall University School of Medicine and is charged with the duty to determine, control, supervise and manage the business and employment affairs of Marshall University School of Medicine. The Marshall University Board of Governors employs or otherwise exercises control over Felix H. Cheung, M.D. and his office staff.
3. Defendant Marshall University Board of Governors is vicariously liable for the negligence of Felix H. Cheung, M.D. and his office staff.

Jurisdiction and Venue

4. Jurisdiction is appropriate in the United States District Court for the Southern District of West Virginia pursuant to 28 U.S.C. 1332 inasmuch as this action involves citizens of different States and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00). Venue is appropriate in the United States District Court for the Southern District of West Virginia, at Huntington, because the underlying medical negligence occurred in Huntington, West Virginia.

Facts

5. On November 13, 2020, Dale Petry presented to Cabell Huntington Hospital for a total right knee arthroplasty. The operation was performed by Defendant's employee, Felix H. Cheung, M.D.

6. Following the procedure, on November 16, 2020, Mr. Petry presented to Dynamic Physical Therapy and Sports Medicine in Montgomery, West Virginia for physical therapy of his right knee. Mr. Petry continued with physical therapy approximately three times per week, as ordered. On December 21, 2020, Mr. Petry presented to physical therapy and explained that "his incision below his knee broke open and leaked some fluid." On December 23, 2020, Mr. Petry presented to physical therapy and was noted that he could barely walk and was "limping badly" on his right leg. The physical therapist also noted that, "looked closer at distal incision and found it to be draining with increased discoloration. Distal knee incision also slightly reddened. Called Dr. Cheung's office regarding the symptoms, took pictures of the wound and outlined reddened area to watch for infection."

7. On December 29, 2020, Mr. Petry presented to physical therapy but was unable to bear weight on his right knee. Mr. Petry was noted to have increased soreness and swelling.

As a result, he was sent to the Emergency Room for a doppler ultrasound study. On December 30, 2020, Mr. Petry presented to physical therapy and reported pain in his right knee and that he was now walking with a walker.

8. On January 8, 2021, Mr. Petry again presented to physical therapy with complaints of severe pain and walking with a walker. He also explained that the pain was causing sleep loss and impaired his “functional mobility”. The physical therapist noted during this visit that she contacted the “MD office via VM and text and was instructed by MD nurse that physician would be contacted.”

9. In addition to his complaints to the physical therapist, Mr. Petry and his wife, Sonya Petry, contacted Dr. Cheung’s office on numerous occasions during this time frame. Upon information and belief, Dr. Cheung was out of the country during this time (December 2020 and/or January 2021) and did not arrange physician coverage for his patients while on vacation.

10. On January 10, 2021, Mr. Petry was so weak, he could not stand. He was incoherent, pale and extremely lethargic. As a result, an ambulance was called and Mr. Petry was transported to Cabell Huntington Hospital. During his admission at Cabell Huntington Hospital, Mr. Petry was diagnosed with a joint infection (MRSA) of his right knee. He became severely septic causing confusion and delirium. He required multiple procedures due to the spread of infection from his right knee to his heart, spine and brain.

11. Following the diagnosis of joint infection, Mr. Petry’s right knee implant was removed and his leg was fused at the knee joint rendering his knee non-functional. Because Mr. Petry has no use of his right leg at the knee, he will require a leg amputation at the knee joint to regain function with the use of a prosthesis.

12. Defendant, through its employees and agents, fell below the applicable standard of care by failing to arrange appropriate coverage when Felix H. Cheung, M.D. left the country in December 2020 and/or January 2021. It was well below the standard of care for Defendant, through its employees and agents, to fail and/or refuse to see Mr. Petry at his office in late December 2020 and early January 2021. After repeated inquiries from the Petry family in late December and early January, it was below the standard of care for Defendant, through its employees and agents, to instruct Mr. Petry to simply come to the office on January 11 or 12, 2021. This delay in treatment proximately caused Mr. Petry's injuries and damages.

13. Defendant, through its employees and agents, abandoned its patient, Dale Petry, in violation of the applicable standard of care proximately resulting in severe and permanent injuries and damages to Plaintiffs.

14. Defendant's failure to follow the accepted standard of care in December 2020 and January 2021 deprived Mr. Petry of a chance of recovery or increased the risk of harm to him which was a substantial factor in his injury. Had Defendant followed the accepted standard of care in December 2020 and January 2021, it would have resulted in a greater than twenty-five percent chance that Mr. Petry would have had an improved outcome and recovery.

15. As a result of Defendant's deviations from the applicable standard of care, Plaintiff Dale Petry has incurred in excess of \$1.2 million in medical expenses.

16. As a result of Defendant's deviation from the standard of care, Plaintiff Dale Petry will require a right leg amputation at the knee and will incur future medical expenses, services and assistance for the remainder of his life.

17. As a result of Defendant's deviation from the applicable standard of care, Plaintiff Sonya Petry has suffered a loss of consortium and will continue to suffer a loss of consortium in the future.

WHEREFORE, Plaintiffs respectfully demand judgment against the Defendant for an award of damages including, but not limited to, past and future economic and non-economic damages, together with taxable court costs and interest.

PLAINTIFFS DEMAND A TRIAL BY JURY.

**DALE PETRY and
SONYA PETRY,**
By counsel,

/s/ Ben Salango

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